



## Guatemala

### Country Reports on Human Rights Practices - [2003](#)

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Guatemala is a democratic republic with separation of powers and a centralized national administration. The Constitution provides for universal suffrage to elect a one-term president and a unicameral congress. Elections for president, considered by international observers to be free and fair, were held in November and December, and Oscar Berger of the three-party coalition Grand National Alliance (GANA) won a 4-year term. The judiciary is independent; however, it suffered from inefficiency, corruption, and intimidation.

The Minister of Interior oversees the National Civilian Police (PNC), which has primary responsibility for internal security. There are no active members of the military in the police command structure; however, the Government occasionally ordered the army to support the police. The law subordinates military personnel to police control during joint patrols or operations. The army is responsible for external security, and the Constitution requires that the Minister of Defense be a military officer. A number of retired military officers with ties to violent, organized crime continued to have significant influence within the army, police, judiciary, and executive branch. Some members of the security forces committed human rights abuses.

The economy is market-based, and the population was approximately 11.5 million. Textile and nontraditional agricultural exports grew rapidly, while coffee, sugar, and bananas were the leading traditional exports. Remittances from citizens abroad constituted the largest source of foreign exchange and more than 30 percent of the population depended on remittances to raise the family income above the poverty line. The economic growth rate was approximately 2 percent. Almost 40 percent of the work force and 60 percent of the poor were engaged in some form of agriculture. Inflation was 6.3 percent. Land distribution is highly skewed: 1 percent of farms contained more than one-third of all cultivated land. There was a marked disparity in income distribution, and poverty was pervasive, particularly in the large indigenous community. Approximately 57 percent of the total population and 72 percent of persons in rural areas lived in poverty. Combined unemployment and underemployment reached 18.2 percent, and 70 percent of the population was employed in the informal sector. Foreign aid is an important part of national income.

The Government's human rights record was poor; although there were improvements in some areas, serious abuses persisted. There were credible reports of killings by individuals linked to security forces and of politically motivated killings by nonstate actors. There were reports of violent deaths, killings, and "social cleansing" in which persons deemed socially undesirable (for example, gang members, local delinquents, street children, prostitutes, and homosexuals) were killed by unknown assailants. There were no reports of politically motivated disappearances. The Constitutional Court confirmed the 2001 conviction of three former military members and one priest for the 1998 killing of Bishop Gerardi. An appeals court overturned the 2002 conviction of Juan Valencia Osorio for the 1990 murder of anthropologist Myrna Mack Chang. In October, the President completed the disbanding of the Presidential Military Staff (EMP).

There were credible reports of individual police officers' involvement in kidnappings. Security forces tortured, abused, and mistreated suspects and detainees. Prison conditions remained harsh. In most cases, the prosecutorial and judicial systems did not ensure full and timely investigations, fair trials, or due process. Arbitrary arrest and lengthy pretrial detentions were problems. Judges and other law enforcement officials were subjected to intimidation and corruption. Impunity was pervasive, although efforts to reform the judiciary continued. There were reports that private communications were monitored. Members of the media were targets of attacks, threats, and intimidation. Attacks on nongovernmental organizations (NGOs) and human rights workers by unidentified persons decreased during the year. Violence and discrimination against women persisted, as did societal abuse of children and discrimination against persons with disabilities and indigenous people, which the Government took some steps to address. There were reports of retaliation by employers against workers who sought to form unions and

participate in union activities, and the Government did not effectively enforce laws to protect workers who exercised their rights. There was widespread employment of minors in the informal sector. Trafficking in women and children was a problem.

The Government accepted the Human Rights Ombudsman's proposal for a U.N.-led commission to investigate possible links between illegal clandestine groups or security forces and attacks on human rights defenders and organized crime; at year's end, the agreement was scheduled to be submitted to the Congress for ratification in January 2004. The U.N. Verification Mission in Guatemala (MINUGUA) continued to monitor peace accord implementation and human rights problems, and the U.N. extended its mandate to the end of 2004, at the Government's request.

## RESPECT FOR HUMAN RIGHTS

### Section 1 Respect for the Integrity of the Person, Including Freedom From:

#### a. Arbitrary or Unlawful Deprivation of Life

There were no confirmed political killings by state actors; however, security forces committed a number of killings. The Government arrested and prosecuted some of those responsible; however, in many cases, the weak investigative, enforcement, and prosecutorial system prevented the Government from adequately investigating killings and other crimes or arresting and successfully prosecuting perpetrators (see Sections 1.c. and 1.e.).

In July, Auxiliary Human Rights Ombudsman for Chimaltenango Province, Josue Israel Lopez, was killed; investigators suspected personal rather than political motives for the crime. No one had been arrested by year's end. The Special Prosecutor for Human Rights, Thelma de Lam, who is investigating the case, reported receiving death threats and a lack of cooperation from the local police.

MINUGUA reported that it had confirmed 7 extrajudicial killings between July 2002 and June 2003, compared with 13 such killings in the previous year. (MINUGUA considers extrajudicial any killing by a state actor, whether by or not by orders of the Government.) There were no confirmed cases of persons killed by orders of the Government or with its complicity.

MINUGUA's report noted a number of killings by members of the police. Many of these cases involved the accidental discharge of weapons, drunken misbehavior by on- or off-duty officers, questionable crowd control techniques, or poor judgment by officers who lost control of unstable situations involving angry crowds or persons resisting arrest. In some of these cases, there was effective investigation by both the police Office of Professional Responsibility (ORP) and the prosecutors. In others, there was credible evidence of a cover-up by police officers, the ORP, or both, and frequently, inadequate investigations by the prosecutor's office. While the number of lynchings decreased, MINUGUA reported that a larger percentage of the incidents involved municipal officials, particularly auxiliary mayors.

In April, human rights activist and Mayan priest Diego Xon Salazar was killed in Chichicastenango, Quiche. Xon Salazar had reportedly received multiple death threats related to his work denouncing the resurgence of the Civilian Defense Patrols (PACs) in the Quiche. PACs were paramilitary elements conscripted by the military during the internal conflict, which were responsible for many of the summary executions, disappearances, instances of torture, and other serious human rights violations. In May, Mayan priest Gerardo Camo Manuel was killed during a religious ceremony in Rabinal, Baja Verapaz, after reportedly receiving death threats from one or more members of his community. On December 9, the prosecution arrested two police officers for Camo Manuel's killing; a trial was pending at year's end.

On April 9, 16 agents of the PNC's former Department of Anti-Narcotic Operations (DOAN) were convicted and sentenced to 25 years in prison for the January 2002 murder of Leonel Diaz Valenzuela and Abinail Cerna, and on August 21 an appeals court confirmed the sentences.

There were no developments and none were expected in the February 2002 shootout between members of the Criminal Investigative Service (SIC) of the PNC and military intelligence personnel that killed two members of the military, and injured three police officers.

There was no further progress in the April 2002 killing of Rudy Castillo and Erick Garcia in Sumpango, Sacatepequez, allegedly by the police. The case against a police officer charged in the killing was closed after

investigation; two other PNC suspects remained at large.

There was no progress in the April 2002 killing of William Ruano Mayen, the son of Pascual Ruano, a witness in the Bethel Route case in which some 18 individuals were killed in 1997-99 by a group of former military and PAC members. Evidence suggested links between Mayen's killers and the Bethel Route killings.

During the year, there were several reports of deaths of detainees or prisoners during riots at two different federal prisons. Most cases from previous years went unresolved. In the case of the 2000 death of Luis Armando Colindres while in police custody, the courts released the three policemen implicated in his death and detained by the prosecution after they paid \$126 (1,000 quetzals) each.

Most cases of political killings from past years remained unresolved, such as those of former presidential candidate Jorge Carpio in 1993 and, in 2001, of Luis Garcia, a witness to the 1998 Gerardi killing. There was some progress in cases of past extrajudicial killings by members of the security forces; however, in many other cases, there was little or no progress, often due to the tactics of defense attorneys who frequently took advantage of a legal system that tolerates the filing of dilatory motions to derail impending trials against their military clients.

On May 7, an appeals court overturned the October 2002 conviction of Juan Valencia Osorio for the 1990 murder of anthropologist Myrna Mack Chang. On June 19, Helen Mack requested the Supreme Court to annul the appeals court decision, and the request remained pending at year's end. In February, the Inter-American Court of Human Rights heard the Mack case. During the trial, the Government admitted state responsibility for Myrna Mack Chang's killing. On December 19, the Court found the state responsible for Myrna Mack Chang's death and the denial of justice in her case. The Court ordered the Government to pay \$779 thousand (6 million quetzals) in compensation and to take other steps to recognize its responsibility.

On October 1, the Constitutional Court confirmed the 2001 conviction and sentencing of three military officers to 30-year, noncommutable sentences for the 1998 murder of Bishop Juan Gerardi, the Coordinator of the ODHAG. On August 20, at the ODHAG's request, the Attorney General named Jorge Antonio Garcia the new prosecutor for the case. MINUGUA continued to confirm multiple reports of threats, acts of intimidation, and surveillance by those involved with the case; the body of a key witness, who was reportedly killed in December 2002, was found on January 21, and on October 5, Erick Urizar, a defense witness in the case, was shot to death, although it was unclear that Urizar's killing was politically motivated (see Sections 1.e. and 4).

In August, Public Ministry prosecutor Mario Leal reported that at least 20 of the 183 individuals listed in the "Military Diary" (an alleged military record of civilians subjected to forced disappearances between 1983 and 1985) were still alive. Leal indicated his intent to call 6 witnesses to give testimony in connection with 75 criminal cases filed by the victims' families against the military and police but claimed many of the witnesses were reluctant to participate for fear of retribution.

Progress in some massacre cases dating to the 1980s remained stalled. The Inter-American Court of Human Rights has not set a date for a trial in the case of the 1982 massacre in Plan de Sanchez, Baja Verapaz, in which the army and PAC members allegedly killed 268 people. The Government still has not complied with a settlement, including economic reparations, which the President's Commission on Human Rights (COPREDEH) promised in 2000 after admitting state responsibility for the massacre.

Despite a 2001 Supreme Court order to proceed with the trial of 5 guerrillas for the 1988 massacre of 22 civilians in El Aguacate, Chimaltenango, there was no progress in the case.

On June 3, the regional sentencing court in San Pedro Carcha, Alta Verapaz, reopened the 1995 Xaman massacre case. The trial charged the 16 defendants (all soldiers) with the murder of 11 civilians in Chisec, Alta Verapaz. Approximately 30 members of the Aurora 8 de Octubre victim community testified in August and September. A verdict was pending at year's end.

The case of the 1982 military massacre of 250 civilians at Dos Erres, Peten, remained stalled in court by 34 motions of appeal by the defense. In February, the Families of the Disappeared in Guatemala (FAMDEGUA) filed a motion with the Inter-American Commission on Human Rights Commission (IACHR) requesting the Commission to reopen the case if the Government did not comply with its unfulfilled commitments. On April 25, COPREDEH and San Carlos University signed an agreement to launch the Project for Psychological Assistance for the Victims of the Dos Erres Massacre, in compliance with part of the reparation commitments. The 10th Court of Appeals continued analyzing a series of appeals requesting that the defendants be granted amnesty under the National Reconciliation Law, while MINUGUA, FAMDEGUA, and the prosecutors, stated that the assassination of civilian

population should not be considered a military action but rather a heinous crime that must be punished.

Prosecutor Mario Leal completed witness interviews in connection with lawsuits filed in 2000-2001 on behalf of communities where civilians were massacred by government security forces. Leal compared the declarations of the witnesses with the forensic reports from the exhumations in 22 different communities, which form the Association for Justice and Reconciliation, the private plaintiff in the case. The suits allege crimes, including genocide, committed by the high command of former President Fernando Romeo Lucas Garcia and that of former de facto president and President of Congress, General (retired) Efraín Ríos Montt. The cases were transferred from the metropolitan courts to the regional court in Nebaj, Quiché. Human rights lawyers working on the case formally requested that the regional Quiché judge recuse himself, since the cases encompassed crimes committed throughout the country. Many believed the transfer of the cases was a stalling tactic.

Exhumations of secret mass graves continued throughout the year but occasioned death threats. Exhumation teams reported that some communities had lost their resolve to participate (see Section 4). Forensic scientists have exhumed more than 2,335 remains from more than 280 sites since exhumations began in 1992. Between January and December, forensic scientists exhumed 363 remains from 79 different sites. Exhumation teams increased their productivity tenfold in the last decade, but noted that demand for exhumations increased and the work could continue for several decades to come. Most of the bodies recovered were those of civilian victims of military or paramilitary killings in the early 1980s. Forensics groups used the information obtained from the exhumations to verify eyewitness reports of massacres--of which the Commission for Historical Clarification recorded 669--and to assign, at least in general terms, responsibility. Forensic research and DNA testing identified some of the remains and were used in some criminal cases.

In June, family members of victims of the Rabinal, Baja Verapaz, massacres participated in a reburial of approximately 70 bodies after the examination of the forensic evidence had been made by the Guatemalan Forensic Anthropology Foundation and the Public Ministry. The group collided with a Guatemalan Republican Front (FRG) campaign rally for presidential candidate Ríos Montt, planned by the regional FRG congressman for the same day as the reburial. The reburial participants threw stones at Ríos Montt, who was forced to leave the scene abruptly. Human rights activists operating in Rabinal reported increased death threats and surveillance after the incident.

In March, the Spanish Supreme Court ruled that it had jurisdiction over the human rights abuses committed against Spanish citizens involved in the massacre at the Spanish Embassy and the five Spanish priests killed in Guatemala in the early 1980s. The case was filed in 1999 by Nobel Peace Prize-winner Rigoberta Menchú against Ríos Montt, former President Fernando Lucas Garcia, and former de facto President Oscar Humberto Mejía Victores for human rights abuses, including genocide, torture, and terrorism, committed during the 36-year internal conflict. A trial date had not been set at year's end.

On March 20, the Government announced that 250,000 former members of the former PACs would receive approximately \$660 (5,241 quetzals) each for their services during the internal conflict and distributed the first payment of \$216 (1,710 quetzals) in April. The Government's agreement to provide indemnification prompted protest from civil society groups and international human rights observers, who noted that some ex-PACs were implicated in human rights abuses and that families of their victims had not yet received compensation.

On May 9, the law creating the National Reparations Plan went into effect, providing for a National Reparations Commission with a budget of \$388 million (3,081 million quetzals) over 11 years to identify the victims of the war and award them reparations payments.

There were plausible allegations of politically motivated killings by nonstate actors during the year, with only limited willingness on the part of prosecutors to investigate such killings. In the period leading up to the November national elections, there were at least 29 killings of opposition political candidates, although the Organization of American States (OAS) Mission reported that only 2 of the killings were clearly election related (see Section 3). In some of these cases, evidence was not sufficient to conclude whether the killing was politically motivated. On October 19, National Unity of Hope (UNE) party member Hugo Garcia was shot by two individuals while attending a political meeting at the UNE headquarters in Jalapa. Two suspects were arrested and awaited trial at year's end. On May 13, FRG mayor Hugo Cal reportedly shot Unionista party member Byron Vladimir Jom in San Cristóbal Verapaz, Alta Verapaz as Jom was posting campaign propaganda. Cal was in police custody, awaiting trial, at year's end.

There was no progress in the case of the February 2002 killing of Cesar Rodas, a witness in the 2001 Government Printing Office case. Despite a 2002 IACHR order that the Government provide police protection to five of the witnesses, who reported being followed and threatened by unknown individuals, several of them reported

assassination attempts during the year.

There was no progress in the March 2002 killing of Jorge Rosal, a regional leader of the Patriot Party, and none was likely.

Ever Lopez Gomez and Billy Rene Barrios, suspected in the April 2002 killing of Menchu Foundation accountant Guillermo Ovalle, remained in prison awaiting trial (see Section 4).

There were several killings characterized as acts of "social cleansing" in which persons deemed as socially undesirable were killed. In February, Casa Alianza Director Bruce Harris called for a thorough investigation into the murder of street child Oscar Garcia; Harris said that only 5 percent of the cases of murdered street children reported to the Public Ministry ever went to trial. Street children continued to be the victims of violence by unknown persons (see Section 5). There were multiple reports of women tortured, disappeared, and killed (see Sections 1.c. and 5).

There was no progress in the investigation of the 2001 killing of Sister Barbara Ann Ford. The prosecutor had not established a motive.

The police reported that between January and August there were 18 attempted lynchings in which 14 victims died, compared with 61 such attempts resulting in 25 deaths in all of 2002. MINUGUA continued to verify cases that were planned or premeditated events, some of which included the participation of municipal officials, local leaders, or former members of Civil Defense Patrols. The large majority of the attacks took place in heavily indigenous, rural areas where the justice system is least accessible. MINUGUA concluded that the Government's weak response to crime fueled partial public acceptance of lynchings.

On August 3, fighting broke out between the two towns of Ixchiguan and Tajumulco, San Marcos, over a land conflict. When police and army personnel entered the area in an attempt to quell the fighting, the villagers turned their weapons against them. At least two policemen and one soldier were killed.

#### b. Disappearance

There were no reports of politically motivated disappearances; however, there were credible allegations of individual police involvement in kidnappings. Between January and November, the Public Ministry opened seven cases of kidnapping against three female and four male police officers. Six of the kidnappings took place in the department of Guatemala and one in the department of San Marcos. The investigations remained pending at year's end.

There were no developments and none were expected in the January 2002 case in which DOAN agents, conducting a drug raid in Chochon, Izabal, illegally detained Humberto Orellana Sis, who subsequently disappeared and whose whereabouts remained unknown (see Section 1.a.).

Disappearances in high-profile cases from past years remained unresolved at year's end. In the case of the 2000 disappearance of University of San Carlos professor and social activist Mayra Gutierrez, the Public Ministry identified a primary suspect and requested the police to apprehend him; however, the suspect was believed to have fled the country.

On March 19, the Government formally recognized the National Commission for the Search for Disappeared Children, which is now headed by the Human Rights Ombudsman's Office. The Commission was created by civil society organizations in 2001. In June, the Commission released its second annual report, which documented 575 cases of disappeared children and reported 43 family reunifications since June 2002; in the last 2 years, the Commission has documented 1,000 cases and performed 60 reunifications. The Commission reported that the primary obstacle to its work was the military's refusal to provide access to its records on captured children.

In January, the Government complied with part of the February 2002 IACHR order to award \$498,000 (3,859,500 quetzals) in damages to the survivors of disappeared guerilla leader Efraim Bamaca Velasquez and publicly acknowledged state responsibility for his death; however, the Government has yet to locate his remains.

The appeal of the 2001 court decision to dismiss the case against retired general and former de facto President Oscar Mejia Victores for his alleged role in the 1984 disappearance of Fernando Garcia remained pending at year's

end.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The Constitution provides for the integrity and security of the person and prohibits physical or psychological torture of prisoners; however, there were credible reports of torture, abuse, and other mistreatment by members of the PNC during the year. These complaints typically involved the use of excessive force during arrests, interrogations, or other police operations. Criminal Investigative Service (SIC) detectives continued to torture and beat detainees during interrogation to obtain confessions. The Government and the PNC showed little willingness to investigate, prosecute, or otherwise punish officers who committed abuses. The PNC transferred some cases of alleged torture to the Prosecutor's Office. The bodies of a significant number of victims showed signs of torture or cruel treatment (see Section 1.a.).

In August, MINUGUA reported that it had investigated 83 complaints of torture and cruel, inhuman, and degrading treatment and confirmed 79 of them between January and August. The police, particularly the SIC, committed most of the violations. The police sometimes punished the use of excessive or illegal force by officers; however, they more often merely transferred offenders to a different location. In several cases, there was credible evidence that police officers and their superiors altered documentation, falsified evidence, bribed and intimidated victims and witnesses, or otherwise obstructed the investigation and prosecution of police misconduct.

In March, members of the Anti-narcotic Analysis and Information Service, the SIC, the Public Ministry, and the army unlawfully detained and tortured Salvador Hernandez Duarte, Vicente Atilio Mejia Alvarez, and Victor Hugo Gil Pena in a counter-narcotics operation in Military Zone 5, Rio Hondo, Zacapa. According to MINUGUA, security forces attempted to gain information about the location of a narcotics shipment by using electric shock treatments on the detained subjects. No action was taken against the perpetrators.

There were multiple reports of women tortured, disappeared, and killed (see Sections 1.a. and 5).

In the 2002 torture and killing of Manuel Garcia de la Cruz, a member of National Coordinator of Widows (CONAVIGUA), a human rights group, in Joyabaj, Quiche, the investigative team arrested the primary suspects and were preparing for the trial at year's end.

Casa Alianza, an NGO, reported that the number of incidents of killing and abuse of street children increased (see Sections 1.a. and 5).

During the year, groups of peasants continued forcible occupation of more than 60 farms. In most cases, eviction orders were not enforced; in some cases, evictions were carried out peacefully. There were also isolated reports of excessive force by the police.

Prison conditions remained harsh. The prison system continued to suffer from a severe lack of resources, particularly in the areas of prison security and medical facilities. According to the registry maintained by the prison system, there were 8,459 prisoners throughout the country, while the official capacity of the prison system was 6,974. The overcrowding of jails was particularly severe in the department of Zacapa, where a prison designed to hold 140 inmates held 325, and in Guatemala City prisons Pavon and Preventivo, which were designed to hold 2,482 inmates and held 3,525. Approximately 60 percent of the prisoners were being held in pretrial detention. The average guard-to-prisoner ratio was 1 to 12.

Prisoners continued to complain of inadequate food and medical care. Corruption, especially drug-related, was widespread. Prison officials reported frequent escape attempts and other manifestations of prisoner unrest. The military continued to provide perimeter security for various prisons.

The case of the 2001 breakout of 78 prisoners from the Escuintla maximum security prison, allegedly with the collaboration of prison authorities, concluded in late October when the prison director was sentenced to 16 years in prison; the subdirector and 20 guards were sentenced to 6 years in prison, and 2 wardens were acquitted. All of those convicted appealed, and the appeal remained with the 12th Appeals Court at year's end. In late November, all the inmates who escaped were sentenced to an additional 15 years in prison. None of the inmates appealed the sentence.

The 452 female prisoners in the penal system were held in facilities separate from men; however, the conditions were equally poor. Immigration detention facilities did not always hold female detainees separate from the male

population. Children were held separately from adults. The Secretariat for Social Welfare runs four Centers for the Treatment and Orientation of Minors: One for girls and three for boys.

On July 18, the Congress passed a Minors' Protection Law, which reformed the Penal System and outlined the rights and mandated treatment of minors in detention (See Section 5).

The vast majority of juveniles detained by authorities are between 16 and 18 years old. Between August 2002 and July 2003, the police arrested 1,450 minors: Approximately 20 percent of the arrests were made for robberies and 13 percent for drug possession.

Pretrial detainees often were not separated from convicted criminals. Those serving time for minor infractions were often held with those who had committed serious offenses.

The Government permitted prison visits by independent human rights observers, public defenders, religious groups, and family members. Such visits took place during the year.

#### d. Arbitrary Arrest, Detention, or Exile

The law prohibits arbitrary arrest and detention; however, there were frequent credible reports of arrests without judicial warrants, illegal detentions, and failure to adhere to prescribed time limits in legal proceedings. In practice, arresting officers frequently failed to satisfy legal requisites, particularly with minors. The Constitution requires that a court-issued arrest warrant be presented to a suspect prior to arrest unless he is caught in the act of committing a crime. Police may not detain a suspect for more than 6 hours without bringing the case before a judge. Once a suspect has been arraigned, the prosecutor generally has 3 months to complete his investigation and file the case in court or seek a formal extension of the detention period. The law also provides for access to lawyers and bail for most crimes.

The country is divided into 6 police districts, each subdivided into 28 "comisarios." Between district and comisario level, there are four special units, each headed by police officers for: Information and intelligence; counter-narcotics; investigations; and environmental enforcement. A Director General, a uniformed police officer appointed by the President, directs the districts. Since its inception, the 21,000-member PNC has been understaffed, poorly trained, and severely underfunded. Police corruption was a major problem, and there were credible allegations of involvement by individual police officers in criminal activity, including kidnappings. Rather than discipline its officers, the police often just transferred them to a different part of the country. Impunity for police who commit abuses remained a serious problem.

All PNC members must meet minimum education requirements, pass an entrance examination, and undergo screening to detect suspected human rights violators and involvement in criminal activities. Training for new recruits was cut from 11 to 6 months in an emergency effort to get more police on the street. Police training incorporated 35 course hours on human rights, but none of the 20,000 officers trained since 1997 has received refresher training. The military continued to incorporate human rights training into its curriculum and developed human rights courses with the Human Rights Ombudsman (PDH). Civil Affairs Officers at each command were required to plan and document human rights training provided to soldiers. A separate human rights office within the Office of the Minister of Defense was open to active participation by the human rights community.

There were 21,180 PNC officers or 1 for every 543 persons. Presence outside of the capital improved; however, approximately two-thirds of those police districts remained 60 to 75 percent staffed. The PNC reported that 2,036 of its officers were indigenous.

According to the Interior Ministry, more than 60,000 private security agents worked in the country. According to the Gremial Federation and Security Association, approximately half worked for firms that had not completed legal requirements and were owned by ex-soldiers and policemen. Despite its responsibility for regulating private security firms, the Ministry did little to investigate this.

The ORP performs internal investigations of misconduct by police officers. The ORP has a strong corps of investigators and has shown considerable improvement in professionalism; however, its independence and effectiveness were hampered by the lack of support from the PNC leadership. In isolated cases, ORP investigators appeared to participate in cover-ups of police misconduct. The ORP reported that it received 1,868 complaints which included: 40 cases of homicide, 200 cases of abuse of authority, 274 thefts, 214 cases of corruption or bribery, 179 threats, and 116 illegal detentions. Cases with sufficient evidence to suggest that criminal acts were committed were forwarded to the Public Ministry for further investigation and prosecution. During the year, ORP

closed 1,062 cases, and its investigations resulted in the exoneration of 1,720 police officers.

No active members of the military serve in the police command structure, although the Government may employ the army to support the police temporarily in response to the rising rates of violent crime. Under the law, military personnel are not clearly subordinated to police control during joint patrols or operations. In July, in response to large-scale violent demonstrations in support of Rios Montt's efforts to register as a presidential candidate, President Portillo announced that he was calling out the military to assist the police in restoring order. Only a minor military presence was noted in support of police during the following days, prompting numerous accusations that the military had disobeyed a presidential order. The President subsequently relieved General Rios Sosa, the country's second-ranking military officer and the son of Congress President Rios Montt, of his command.

Persons attempting to enter the country illegally were often subject to extortion and mistreatment by government officials. Many observers believe this mistreatment is underreported because illegal immigrants rarely lodge formal complaints, either with the authorities or against them, and there is little legal assistance available to such persons.

Detainees were allowed prompt access to counsel; however, very limited resources were devoted to the public defense system.

There was a bail system.

There were no reliable data on the number of arbitrary detentions, although most accounts agree that security forces routinely ignored writs of habeas corpus in cases of illegal detention. In August, MINUGUA reported that it investigated 49 cases of illegal or arbitrary detention and confirmed 41 of them between January and August.

Of the 8,459 prisoners in custody as of September, 3,319 had been sentenced and the rest awaited trial. The law sets a limit of 3 months for pretrial detention; however, longer detentions occurred routinely. Prisoners often were detained past their legal trial or release dates, sometimes for years. Prisoners were not released in a timely fashion after completing their full sentences due to the failure of judges to issue the necessary court order or other bureaucratic problems.

The Constitution prohibits exile, and the Government did not use it. However, self-imposed exile is a common response by citizens who feel threatened or intimidated.

#### e. Denial of Fair Public Trial

The Constitution provides for an independent judiciary; however, the judicial system often failed to provide fair trials due to inefficiency, corruption, insufficient personnel and funds, and intimidation of judges, prosecutors, and witnesses. A May report by Amnesty International claimed that the failure of the legal system to deliver justice was a major factor contributing to intimidation against the country's human rights community and others trying to combat impunity in this situation. Many high-profile human rights cases remained pending in the courts for long periods as defense attorneys employed numerous dilatory appeals and motions. Courts sometimes took months to resolve even patently frivolous appeals. There were numerous credible allegations of corruption, manipulation, and intimidation in the judiciary. There were credible reports of the killing and threatening of witnesses, which continued to be a problem (see Sections 1.a. and 1.c.).

The judiciary is composed of the Supreme Court, appellate courts, trial courts, and probable-cause judges (who function like grand juries). There also are courts of special jurisdiction, such as labor courts and family courts, which also are under the jurisdiction of the Supreme Court. The Constitutional Court is independent of the rest of the judiciary. There are several community courts in indigenous rural areas.

The Constitution requires that Congress elect all Supreme Court and appellate court magistrates every 5 years from lists prepared by panels composed of active magistrates, representatives of the bar association, law school deans, and university rectors.

Judges and prosecutors continued to receive threats designed to influence pending decisions or to punish past decisions. Death threats and intimidation of the judiciary were common in cases involving human rights violations, particularly when the defendants were active or former members of the military, military commissioners, or former members of PACs. Witnesses were often too intimidated to testify. Plaintiffs, witnesses, prosecutors, and jurists involved in high-profile cases against members of the military reported threats, intimidation, and surveillance. Prosecutors, judges, and witnesses associated with the Gerardi case reported continued threats, as did witnesses,



prosecutors, and at least one judge in the Mack case (see Section 1.a.). Those involved in government corruption cases were also targeted, as in the cases of Karen Fischer and Tatiana Morales, former Special Anti-corruption prosecutors, who resigned after receiving threats and pressure from within the Government.

Many judges were denied private health and life insurance because their jobs were too dangerous. Between January and August, the Public Ministry spent approximately \$170,000 (1.3 million quetzals) on its witness protection program. By August, the judicial system had received 80 complaints of threats against judges, compared with 76 in all of 2002. The Special Prosecutor for Crimes against Judicial Personnel investigated 77 cases but lacked the personnel and resources necessary to carry out his mission.

In January, Supreme Court Magistrate Hector Mauricio Rodriguez Argueta was killed in what police concluded was an attempted car-jacking.

In March, an explosive device was detonated outside of Supreme Court Magistrate Jose Rolando Quezada Fernandez's home.

In June, the Mack Foundation reported that 114 judges and 8 prosecutors reported receiving threats during the year.

The Criminal Procedures Code provides for the presumption of innocence, the right to be present at trial, the right to counsel, plea-bargaining, and the possibility of release on bail. Trials are public, allowing victims, family members, and human rights groups to observe the process. Three-judge panels render verdicts. The Criminal Procedures Code provides for oral trials; however, only those attorneys who have graduated since 1994 have had any real training in oral trials. The Code also provides for language interpretation for those who require it; however this provision was rarely honored due to budgetary and other constraints (see Section 5). Nationwide, the Institute for Public Defense employed six interpreters, six bilingual public defenders assistants, and four public defenders who spoke indigenous languages. The Attorney General's Office, or Public Ministry, which is independent of the executive branch, may initiate criminal proceedings on its own or in response to a complaint. Private parties may participate in the prosecution of criminal cases as co-plaintiffs. Lengthy investigations and frequent procedural motions by both defense and prosecution often led to excessively long pretrial detention (see Section 1.d.). Courts showed little willingness to exercise discretion in dismissing frivolous or patently invalid motions. As a consequence, parties used such motions as delaying tactics, frequently holding up trials for months or even years.

In August, Supreme Court President Carlos Larios Ochaita reported that the Court's budget for 2004 was \$166 million (1.3 billion quetzals), which he claimed was inadequate for even the basic needs of the judiciary without considering the creation of the new court provided for in the Minor's Code.

The Law on Judicial Careers regulates the income, terms of office, promotion, training, disciplining, and other activities of judges and magistrates and mandates a 6-month training course for all newly appointed judges. During the year, the Judicial Career Council reviewed the performance evaluations of 63 judges. The Council reviewed numerous cases and issued sanctions ranging from letters of reprimand to firing. The Council is responsible for selecting judges as well as disciplining them in accordance with the law's criteria for sanctions.

The Supreme Court continued to seek the suspension of judges and to conduct criminal investigations for improprieties or irregularities in cases under its jurisdiction. From August 2002 until July, the Judicial Discipline Unit investigated 115 of 537 complaints of wrongdoing that it had received, with the result that 66 claims were found to be baseless, 25 judges were sanctioned, 22 were suspended, and 8 were sanctioned with the recommendation that they be removed.

The Public Ministry has been hampered in its efforts to investigate crimes and prosecute offenders by inadequate training and equipment, excessive caseloads, and insufficient numbers of qualified investigators. Prosecutors remained susceptible to intimidation and corruption. In addition, the law's failure to delineate the responsibility for investigating crimes between the PNC or the Public Ministry led to rivalries between these organizations, as well as the duplication of investigative efforts. The Attorney General and head of the Public Ministry stated that a lack of funding was the source of most of the Ministry's deficiencies. Only an estimated 3 percent of approximately 250,000 cases filed with the Public Ministry annually were prosecuted. The Public Ministry's budget for the year was \$50 million (398 million quetzals.)

The Government continued efforts to reform the judicial system. Fifteen justice centers, which bring together judges, public defenders, prosecutors, private law practitioners, police, municipal representatives, and civil society in a team approach to dispute resolution and problem solving, provided efficient public service. Clerk of Court

offices streamlined case processing, increased transparency, improved customer service, and virtually eliminated corruption. An analogous system was inaugurated in Guatemala City in the Prosecutor's Office Case Intake Unit. At the Prosecutor's Office Victim's Unit in the capital, doctors and nurses were on call 24 hours a day to assist rape and other crime victims and to gather evidence for their cases (see Section 5), and similar units also operated in every department of the country.

There were no reports of political prisoners, although union leaders claimed that Rigoberto Duenas, a union leader, who was arrested on June 8 on suspicion of involvement in the Social Security Institute embezzlement scandal, was a political prisoner.

#### f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

The Constitution provides for the inviolability of home, correspondence, and private documents; however, the authorities allegedly sometimes disregarded these provisions. Elements of the military, specifically the EMP and the Directorate of Military Intelligence, reportedly continued to monitor private communications. During the year, most human rights organizations reported surveillance or telephone anomalies that suggested wiretapping (see Section 4). There was no progress in the Public Ministry's 2001 case against Colonel Juan Valencia Osorio, former director of security of the EMP, for spying. On May 7, an appeals court overturned Valencia's 2002 conviction for the Myrna Mack murder (see Section 1.a.).

The military continued to honor the 1994 presidential order to suspend all conscription, including forced recruitment; the armed forces were able to recruit volunteers from impoverished areas using pay and education incentives.

During the year, there were several reported cases of government employees being forced to make contributions to the ruling party, the FRG, as well as become party members, to obtain or keep their jobs. During the riots of July 24 and 25, there were reports that teachers were required to participate in the pro-FRG demonstrations to keep their jobs.

### Section 2 Respect for Civil Liberties, Including:

#### a. Freedom of Speech and Press

The Constitution provides for freedom of expression, and the Government generally respected this right in practice; however, there were numerous credible reports that members of the media were targets of attacks, threats, and intimidation.

In addition to regular and open criticism of government policies, the print media publicized communiques from human rights organizations, unions, and groups opposed to the Government or its policies. The press criticized the military and other powerful sectors and also regularly published stories on reputed drug traffickers, official corruption, and clandestine intelligence networks.

Daily El Periodico publisher Jose Ruben Zamora reported that a dozen invaders entered his home on June 24 and held him and his family at gunpoint for several hours, warning that he had bothered someone "from above." When Zamora noticed that he was still being followed days after the incident, he sent his wife and children out of the country. Many other journalists reported receiving threats. Prensa Libre's Luis Barilla said his house was firebombed by a Molotov cocktail on July 4, days after he wrote an article on the conflict between massacre-victim family members and presidential candidate Rios Montt. Many freelance journalists also reported threats and minor assaults.

The media were a primary target of the violent demonstrations in support of Rios Montt on July 24. Hector Ramirez of Radio Sonora and television program Notisiete suffered a fatal heart attack as he was chased by a machete-wielding mob. Juan Carlos Torres, from El Periodico, was doused with gasoline and narrowly escaped being set on fire; Hector Estrada, from television program Guatevision, was hospitalized after a similar assault. Several television reporters had equipment smashed and were roughed-up by the crowd.

On October 26, ex-PACs in Huehuetenango Province abducted four journalists to protest delays in payment for their services during the internal conflict. They were released 51 hours later, when a government negotiating team agreed to a payment schedule.

The Government prepared public information programs that the radio and television stations were required to broadcast. On November 25, the President announced that he would transfer the Government's rights to its two national television channels to the Academy of Guatemalan Mayan Languages and to the Congress.

All four of the country's national television stations are owned by a Mexican citizen, Angel Gonzalez, who plays a significant role in politics. These channels were criticized strongly as being monopolistic, pro-government, and interested in broadcasting only uncontroversial news. However, a new cable channel, Guatevision, began transmissions on March 20. Owned by Prensa Libre, it provided an alternative to the other stations and had a strong public affairs component. Civil society representatives, opposition candidates, and foreign diplomats appeared on many of its panel shows.

Investigations continued in the 2001 shooting death of radio journalist Mynor Alegria Almendaris, in Puerto Barrios, Izabal. In August, the court of Chiquimula denied the prosecutor's request for a warrant to arrest sitting congressman and former Puerto Barrios mayor David Pineda for his involvement in the killing. The case remained pending at year's end.

The Government did not restrict access to the Internet or academic freedom.

#### b. Freedom of Peaceful Assembly and Association

The Constitution provides for the right of peaceful assembly, and the Government generally respected this right in practice. Peaceful demonstrations were common.

There were numerous protests by a wide variety of groups around the country to demonstrate on a wide variety of issues; however, on several occasions, demonstrations became violent. Police generally acted with restraint; however, there were some allegations of unnecessary use of force, or, at times, inaction. In January, the teachers unions organized a nationwide strike in which members blocked roads and airports, organized sit-ins at various ministries, and demanded wage increases and improved access to resources. The police acted with restraint and did not use force to impede the demonstrations. The strike ended in March.

The Constitution provides for freedom of association, and the Government generally respected it in practice. However, there were allegations that the Government interfered with political associations, particularly at the local level. There were reports that the ex-PAC payments required registry with the official party (see Section 1.a.).

#### c. Freedom of Religion

The Constitution provides for freedom of religion, and the Government generally respected this right in practice; however, the Government has not implemented the 1995 Agreement on the Identity and Rights of Indigenous People, which provides for respect of spiritual rights of indigenous people. There is no state religion; however, the Constitution explicitly recognizes the separate legal status of the Catholic Church.

The Government did not subsidize religious groups directly. Members of a religion need not register to worship together. However, the Government requires religious congregations (other than the Catholic Church), as well as other nonreligious associations and NGOs, to register as legal entities to transact business.

While there was no government policy of discrimination, a lack of resources and political will to enforce existing laws and to implement the Peace Accords limits the free expression of indigenous religious practice. Indigenous leaders charged that Mayan culture does not receive the official recognition it is due. The Government did not provide mechanisms for free access to ceremonial sites considered sacred within indigenous culture, nor did it provide for the preservation or protection of such ceremonial sites as archaeological preserves. Some indigenous groups considered the Government's use of sacred sites as revenue-generating tourist destinations to be an affront to their spiritual traditions.

On October 1, the Constitutional Court confirmed the 2001 conviction and sentencing of three military officers to 30-year, noncommutable sentences for the 1998 murder of Bishop Juan Gerardi, the Coordinator of the ODHAG (see Section 1.a.).

For a more detailed discussion, see the [2003 International Religious Freedom Report](http://www.state.gov/g/drl/rls/hrrpt/2003/27900pf.htm).

#### d. Freedom of Movement Within the Country, Foreign Travel, Emigration, and Repatriation

The Constitution provides for these rights, and the Government generally respected them in practice.

The law provides for the granting of refugee status or asylum to persons who meet the definition in the 1951 U.N. Convention Relating to the Status of Refugees and its 1967 Protocol. In practice, the Government provided protection against refoulement and granted refugee status or asylum. The Government cooperated with the office of the U.N. High Commissioner for Refugees and other humanitarian organizations in assisting refugees.

### Section 3 Respect for Political Rights: The Right of Citizens to Change Their Government

The Constitution provides citizens with the right to change their government peacefully, and citizens exercised this right in practice through periodic, free, and fair elections held on the basis of universal suffrage for those 18 years of age and older. Ballots are secret. Members of the armed forces and police may not vote.

In the second-round runoff presidential election on December 28, Oscar Berger of the GANA coalition won a 4-year term with approximately 54 percent of the vote. In the period leading up to the elections, at least 29 opposition candidates were killed, and many incidents of violence occurred (see Section 1.a.). Despite some minor irregularities in the electoral registry, the OAS international observation mission categorized the elections as free and fair, with a 56 percent voter turnout in the first round and 49 percent in the runoff.

Voters elect the 158-member, unicameral Congress every 4 years using a system of proportional representation based on population, with deputies elected both from districts and from a nationwide list. Ten parties won seats in the legislature, led by the Great National Alliance (GAN) with 47 seats, followed by the FRG with 43 seats, the UNE with 32 seats, the National Advancement Party with 17 seats, the Unionist Party with 7 seats, the New Nation Alliance with 6 seats, the Democratic Union with 2 seats, the Guatemalan National Revolutionary Unity Party with 2 seats, and the Authentic Integral Development and Christian Democracy Parties with 1 seat each. Congress can and does act independently of the Executive.

There are no legal restrictions on the participation of women in the political process. Approximately 44 percent of the 5 million registered voters were women. In November, voters elected 14 women to the 158-member Congress. A woman, Zury Rios de Lopez, served as the Second Vice President of Congress. Women hold two seats on the Supreme Court and one on the Constitutional Court. There were three female ministers in the Cabinet: The Minister for Culture and Sports, the Minister of Communication and Public Works, and the Minister of Economy.

The Constitution provides for equal rights for indigenous people. Some attained high positions as judges and government officials, but indigenous people still were underrepresented significantly in politics due to limited educational opportunities and pervasive discrimination (see Section 5). There are two indigenous members in the Cabinet. While indigenous people make up 60 percent of the population, they represent only 1 of 12 ministers and 1 of 12 presidential secretaries. Of 158 members of Congress, 18 were indigenous. There are 113 indigenous mayors in the country, out of 331 municipalities, including Quezaltenango, the second-largest city. There was one indigenous ambassador.

### Section 4 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

The Government permits local human rights groups to operate without restriction, and numerous domestic and international groups investigated and reported freely on human rights issues; however, many NGOs and human rights workers received threats or were intimidated by unidentified persons. Senior government officials met with international human rights monitors; however, some government officials questioned the credibility of both domestic human rights workers and international monitors. Many human rights workers believed this public questioning emboldened those who threatened them. While many international human rights organizations and their workers did not enjoy formal legal status, they continued to operate openly.

Human Rights Ombudsman Sergio Morales, elected by Congress in 2002 for a 5-year term, reports to Congress and monitors the rights provided for by the Constitution. The PDH's rulings do not have the force of law. The budget assigned to the PDH by Congress, historically inadequate, was approximately \$5 million (40 million quetzals) for PDH's activities nationwide. Upon the expiration of the MINUGUA's mandate in 2004, the Human Rights Ombudsman's Office is to assume MINUGUA's human rights verification function.

The COPREDEH is charged with formulating and promoting the Government's human rights policy, accepting government responsibility for past human rights abuse cases, and negotiating amicable settlements in those cases before the Inter-American Court of Human Rights. During the year, COPREDEH completed part of the IACHR-

ordered reparations in the Bamaca case by publishing the details of state responsibility in the press. COPREDEH also completed negotiations between the Government and civil society for the establishment of a National Reparations Plan (see Section 1). By year's end, COPREDEH implemented IACHR orders to provide police protection to 14 human rights activists, 2 political activists, 14 judges, 3 journalists, 15 forensic anthropologists, and 12 people carrying the AIDS virus.

There was a marked increase in the number of threats against human rights workers, as well as against journalists and judicial personnel (see Sections 1.a., 1.e., and 2.a.). In August, U.N. Secretary General Kofi Annan reported to the General Assembly that "public security deteriorated, impunity persisted, and the climate of intimidation against human rights defenders, social activists, and journalists...continued." The cases of intimidation, harassment, and violence against human rights defenders, Annan reported, "drew heightened attention to the problem of clandestine groups believed responsible for many of these incidents."

On September 27, Eusebio Macario, a community organizer and founding member of the Council of Ethnic Communities (CERJ), was shot to death in Chichicastenango, Quiche. Macario had reportedly criticized the FRG's Chichicastenango mayoralty candidate for corruption. The Public Ministry Special Prosecutor for Crimes Against Human Rights Workers took up the case, and the investigation was pending at year's end.

There was intimidation of human rights workers, including anonymous telephoned or written threats, break-ins, and surveillance of workplaces, residences, and vehicular movements; however, MINUGUA indicated that the number of such incidents has declined since 2001. Prosecutors, judges, and witnesses in various human rights cases, notably in the Myrna Mack and Gerardi cases, also reported being the targets of various acts of intimidation (see Section 1.e.). Some of the attacks showed high degrees of sophistication and technical expertise. Most human rights cases remained pending for lengthy periods without being investigated or languished in the courts as defense attorneys took advantage of the inefficient judicial system and filed numerous motions and appeals to delay trials.

Throughout the year, individuals associated with forensic anthropology teams investigating mass graves from the armed conflict received specific and credible death threats. A majority of the staff of the FAFG received intimidating phone calls, were accosted and threatened by armed men, and reported that their homes were under surveillance. In August, the prosecutor investigating the threats discovered that a car monitoring the FAFG was registered to the EMP. An investigation into the car's presence continued at year's end.

The PDH received threats throughout the year. On August 26, the PDH's Department of Investigation was burglarized. Two laptop computers and documents were stolen. In the days following the break-in, the Public Ministry arrested four suspects. A trial remained pending at year's end.

On July 24, three armed men forced their way into the home of Norma Maldonado, a women's human rights and environmental activist working with Mama Maquin, a rural indigenous women's group. The intruders destroyed data that Maldonado had been working on with reference to the effects of development on rural indigenous development.

The Public Ministry completed the investigation of the April 2002 killing of Guillermo Ovalle, an accountant for the Rigoberta Menchu Foundation and nephew of its director. A trial was pending at year's end.

In April, human rights activist and Mayan priest Diego Xon was killed in Camancha, Chichicastenango, Quiche. Xon was reportedly vocal in his criticisms of payments to the ex-civilian patrollers in Quiche. The investigation of his killing continued at year's end.

The Public Ministry completed the investigation of the September 2002 killing of Manuel Garcia de la Cruz, a CONAVIGUA member from Joyabaj, Quiche. Five suspects were being held awaiting trial.

In January, Human Rights Ombudsman Sergio Morales, along with the National Movement for Human Rights, presented the Government with a proposal for a U.N.-OAS-Government led commission to investigate clandestine groups (CICIACS). The Government accepted the proposal. In March, Foreign Minister Edgar Gutierrez and Morales signed a memorandum of understanding outlining how the government and civil society would work together to facilitate the formation of the CICIACS. The agreement was scheduled to be submitted to the Congress for ratification in January 2004.

In April, the Attorney General named Thelma Pelaez de Lam as Special Prosecutor for crimes against human rights workers. Despite encouraging advances in the investigation of several paradigmatic cases, the office's work

was hampered by constant threats and intimidation, as well as by a lack of cooperation from the police, whose staff comprises a majority of the suspects in the cases the Special Prosecutor is investigating (see Section 1.e.).

MINUGUA reduced its presence significantly in preparation for a 2004 departure but continued to monitor implementation of the human rights provisions of the Peace Accords and to strengthen democratic institutions. MINUGUA stated that the Government generally cooperated with its investigations but cited occasional isolated incidents in which government officials or institutions had obstructed its efforts.

In August, U.N. Secretary General Kofi Annan reported to the U.N. General Assembly that the threats, harassment, and violence against human rights activists, judges, prosecutors, attorneys, witnesses, and forensic anthropologists "drew heightened attention to the problem of clandestine groups believed responsible for many of these incidents."

#### Section 5 Discrimination Based on Race, Sex, Disability, Language, or Social Status

The Constitution states that all persons are free and equal in dignity and rights and that the State must protect the life, liberty, justice, security, peace, and development of all citizens. However, in practice, the Government frequently was unable to enforce these provisions, due to inadequate resources, corruption, and a dysfunctional judicial system (see Sections 1.c. and 1.e.).

During the year, there were at least five killings of male homosexual sex workers. There were no arrests made in any of the killings, and the police who arrived on the scene abused the victims' companions. There were no arrests in the 2000 killings of five male homosexual sex workers.

#### Women

Violence against women, including domestic violence, remained common among all social classes, and there were multiple reports of women tortured, disappeared, and killed (see Sections 1.a. and 1.c.). The Law on Domestic Violence provides that the Prosecutor's Office, the national police, family courts, legal clinics, and the Human Rights Ombudsman's Office may receive complaints of domestic violence. The law provides for the issuance of restraining orders against alleged aggressors and obligates the PNC to intervene in situations of domestic violence. The Prosecutor's Office reported receiving 4,580 complaints of family violence against women and children during the year; none of the cases came to trial. The PDH estimated that 90 percent of the cases went unreported.

The Law to Prevent and Sanction Intrafamily Violence requires the PNC to intervene in violent situations in the home. The press reported that in many cases the police did not respond to calls for help. The Politico-Civic Convergence of Women reported that officers who did arrive often chastised female victims for behavior that provoked their husbands' ire. The Program for Prevention and Eradication of Intrafamily Violence, a government program under the Secretariat of Social Work of the First Lady, reported that it received between 40 and 50 calls a day from battered women and children via its emergency hotline.

The office of the Ombudsman for Indigenous Women, led by Juana Catinac, provided social services for victims of domestic or social violence, as well as mediation, conflict resolution, and legal services for indigenous women. It also coordinated and promoted action by both government institutions and NGOs to prevent violence and discrimination against indigenous women; however, it lacked the human resources and logistical capacity to perform its functions on a national level. The Ombudsman's budget was \$278,000 (2.2 million quetzals), a slight increase over past years. Since 2002, the office has handled 2,420 cases, including labor conflicts, and domestic violence.

Sexual offenses and prostitution remained a problem. The Prosecutor's Office reported receiving 431 cases of rape and sexual assault between January and June. The Office of Attention to the Victim, a unit within the Public Ministry, reported receiving 4,058 cases of family violence between January and July.

The Penal Code does not define sexual assault as a crime. During the year, the Office of Attention to the Victim received 1,642 complaints of rape. Many observers believed that increases in reported rapes did not reflect an increase in the number of rapes committed, but rather an increased willingness on the part of victims to come forward and improved record-keeping of crime statistics. Despite these advances, relatively few rape cases went to court, in large part because police have little training or investigative capacity for such crimes, and because many rape victims were reluctant to report and prosecute such crimes. The law allows a rapist to be exonerated when the victim is at least 12 years old and agrees to marry him, but the Public Ministry must approve the marriage when the

victim is below the age of 18.

Prostitution is not illegal; however, procuring and inducing a person into prostitution are crimes that can result in either fines or imprisonment, with heavier penalties if minors are involved. Trafficking in women and minors, primarily for the purpose of prostitution, is illegal and was a growing problem (see Section 6.f.).

The Network for Non-violence Against Women reported that more than 220 women were killed, most by gunshot, during the year, compared with 244 in 2002. Between May 7 and August 22, the Human Rights Ombudsman's office investigated the torture and killing of 181 women; it attributed only 10 percent of the crimes to gang activities and 80 percent to other organized crime. The Ombudsman's Office reported little cooperation from the police or Public Ministry in investigating these crimes.

The Constitution asserts the principle of gender equality; however, in practice women faced job discrimination and were less likely to win management positions. The PDH stated that women generally received significantly lower pay than men, in many cases one quarter to one-half the salary for the same work. Some women were subjected to pre-employment pregnancy tests. Women were employed primarily in low-wage jobs in the textile industry, agriculture, retail businesses, and the public sector. More women than men were employed in the informal sector of the economy, where pay and benefits generally were lower. Women may legally own, manage, and inherit property on an equal basis with men.

More than 50 percent of urban girls and 81 percent of rural girls left school, and an estimated 70 percent of adult women have never received formal education. UNICEF's 2003 report indicated that the female adult literacy rate was 80 percent that of males.

The Secretariat for Women's Affairs advises the President on the coordination of policies affecting women and their development. The Secretariat's National Policy for the Promotion and Development of Guatemalan Women and Plan for Equal Opportunity 2001-06 prioritized areas of critical need for women, such as access to health care and education, but, lacking resources, it focused primarily on developing inter-institutional cooperation with existing programs.

Approximately 400 women served in all branches of the military, representing 16 percent of the enlisted ranks and 3 percent of the officer ranks, and made up approximately 10 percent of the students in the country's military academy. Approximately 10 percent of police officers were women.

## Children

The Constitution charges the Government with protecting the physical and mental health, as well as the moral well-being, of minors; however, the Government did not devote sufficient resources to ensure adequate educational and health services for children. Government spending on education and health declined: Approximately 1.6 percent of the country's gross domestic product was devoted to education and less than 1 percent to health.

The Constitution provides for compulsory education for all children up to the sixth grade. However, less than half the population actually received a primary education, and only 30 percent of students who began primary school completed it, with completion rates even lower in rural and indigenous areas. The average child received 2.2 years of education; however, among indigenous children, the average dropped to 1.3 years. The Ministry of Education attempted to improve these indicators by granting special scholarships to girls and working or orphaned children.

A 2002 report of the Center for National Economic Investigation (CIEN) stated that, despite the Government's efforts to increase primary school enrollments and graduations, dropout rates had increased; illiteracy rates among women remained unchanged; and a very low percentage of resources went to post-primary levels.

UNICEF's 2003 Report estimated under-5 mortality rate at 58 per 1,000 live births. Public health analyses showed that 60 percent of the cases of infant mortality and 76 percent of the cases of maternal mortality were preventable through attention to basic health and environmental measures that have been neglected. An estimated 1.3 million women and children did not have access to basic health services during the year. Boys and girls had equal access to medical care.

Child abuse, including abuse of street children, remained a serious problem (see Sections 1.c. and 6.f.). The Public Ministry reported 1,029 cases of child abuse during the year. Most victims were between the ages of 2 and 10. A Permanent Commission for Children and Youth investigated cases of child abuse. The Social Secretariat for the

Welfare of Children has oversight for the children's welfare programs, treatment and training for children, and special education assistance for children. The Secretariat provided shelter and assistance to children who were victims of abuse; however, these children sometimes were placed with other youths who had committed crimes (see Section 1.c.).

A 2002 Casa Alianza report estimated that there were more than 15,000 sexually exploited boys and girls in the country, many working in the more than 600 bars and nightclubs in Guatemala City. Child prostitution was especially a problem in the capital and in the towns of Escuintla, Tecun Uman, and Coban. Child prostitution in towns along the borders with Mexico and El Salvador continued to increase. Child migrants who failed to cross the border into Mexico often remained in the country and resorted to prostitution to survive. Many children were also brought into the country from El Salvador, Nicaragua, and Honduras by organized rings that forced the children into prostitution. Laws and protection programs for such child migrants were weak or nonexistent, and those taken into custody were often treated poorly by authorities and deported.

Child labor was a problem. UNICEF estimated that 22 percent of all children worked (see Section 6.d.).

The internal conflict left approximately 200,000 orphans throughout the country. Approximately 10,000 children were members of street gangs. Credible estimates put the number of street children at 6,500 nationwide, approximately 4,000 of them concentrated in Guatemala City.

Between July 2002 and June, Casa Alianza reported 10 homicides, 14 forced disappearances, and 14 sexual abuse cases of street children. Most street children ran away from home after being abused. Criminals, reportedly including private security guards and corrupt police or military personnel, often recruited these children into thievery, prostitution, or drug rings. Private individuals, private security guards, and other street children committed most violence against street children.

The Government and a number of NGOs operated youth centers; however, the funds devoted to them were not sufficient to address the problem. The Government maintained one shelter each for girls and boys in Guatemala City. These shelters provided housing for the homeless and incarceration for juvenile offenders.

On July 18, the Congress passed a new Integral Protection Law for Minors, which provides for the creation of Minor's Courts to have jurisdiction over crimes committed by and against minors, establishes the individual rights of minors, and outlines the rights and mandates treatment of minors in detention (see Section 1.c.).

#### Persons with Disabilities

The Constitution provides that the State should protect persons with disabilities; however, persons with physical disabilities suffered discrimination in education and employment practices, and few resources were devoted to combat this problem. In September, the First Lady, Evelyn Morataya de Portillo, estimated that 10 percent of the population suffered some type of disability. Persons with disabilities have limited access to health care, recreational facilities, and work opportunities. Educational resources for those with special needs are scarce, and the majority of the universities are not handicapped accessible. The National Hospital for Mental Health, the principal health care provider for persons with mental illness, lacks: Basic supplies, equipment, hygienic living conditions, and adequate professional staffing. In 2002, the press reported that only 30 percent of children with disabilities received support from the Ministry of Education. The Education Ministry continued a public awareness program in public schools to overcome teachers' resistance to attendance by students with disabilities.

The Law for Protection of the Elderly and the Law on Attention to Disabled Persons mandate equal access to public facilities, prohibit discrimination based on disability, and provide other legal protections. They stipulate equal opportunity for persons with disabilities in health, education, work, recreation, sports, and cultural activities. The law also provides that all persons with disabilities receive the benefits of labor laws and social security and have the right to work. In addition, the law provides for equal educational opportunities, mandatory building access codes, and the right to equal pay. However, government efforts to implement the legislation were weak.

The National Council for the Disabled, composed of representatives of concerned government ministries and agencies, met regularly to discuss initiatives; however, no resources were devoted to the implementation of their recommendations.

#### Indigenous People



The Constitution, recognizing that the country is composed of diverse ethnic groups, obliges the Government to recognize, respect, and promote the lifestyles, customs, traditions, social organization, and manner of dress of indigenous people.

Indigenous people constitute more than half the population; however, they remained largely outside the country's political, economic, social, and cultural mainstream. A 2000 U.N. report stated that 73 percent of indigenous persons lacked economic possibilities and had limited access to basic services. The U.N. Development Program (UNDP) estimated that 90 percent of the indigenous people were poor. While there was no single indicator of indigenous status, there were at least 22 separate Mayan ethnic groups, each with its own language. In addition, there is an indigenous Xinca community of some 6,000 persons. The Garifuna, descendants of Africans brought to the Caribbean region as slaves who later migrated to South and Central America, were a separate minority group.

The majority of the provisions regarding indigenous rights were incomplete in the 2000-04 timetable for the implementation of the Peace Accords. Among the initiatives still pending were educational reforms that include bilingual and intercultural components, promotion of the use of indigenous languages, and the conservation and protection of ceremonial sites. In May, MINUGUA lamented the minimal advancement in the implementation of the Accord on Indigenous Rights 7 years after it was signed.

The commissions established to discuss the implementation of constitutional provisions relating to indigenous rights met during the year to formulate recommendations to the Government regarding protection of indigenous culture, languages, traditions, lands, and sacred sites.

On August 20, the Labor Ministry created a Department of Indigenous People to investigate cases of discrimination and promote implementation of the International Labor Organization (ILO) Convention on the rights of indigenous workers. The Department had no separate budget and only two employees. In August, the Ministry of Labor and the Public Ministry reached an agreement on training labor inspectors and prosecutors on the rights of indigenous workers. On October 17, 45 public servants, indigenous group representatives, and members of political parties completed a 6-month diploma in indigenous rights. The course was an initiative of the Ministry of Labor in cooperation with the Public Administration Institute.

Rural indigenous people had limited educational opportunities and fewer employment opportunities. For this reason, indigenous men constituted a high percentage of the military's ranks. Many indigenous people were illiterate or did not speak Spanish; more than half of indigenous women were illiterate; and a disproportionate number of indigenous girls did not attend school. The Government devoted few resources to bilingual education, and the Ministry of Education has yet to implement the recommendations made by the Commission on Educational Reform. CIEN noted in its annual report on educational reform that some 900,000 children between the ages of 6 and 12 spoke an indigenous language. Nevertheless, only 22 percent of this population received bilingual instruction. Only 12 percent of all teachers were bilingual.

The 2002 Law Against Discrimination addressing discrimination due to gender, ethnicity, language, religion, and economic status was criticized by some indigenous groups because it did not provide a separate status for indigenous rights.

Indigenous people arrested for crimes often are at a disadvantage due to their limited comprehension of Spanish. The Criminal Procedures Code states that the courts must provide interpretation for anyone requiring such services during criminal proceedings; however, reports continued that indigenous people did not have equal access to the justice system. The Public Ministry concentrated 18 interpreters in former conflict areas of the country, and the Public Defender's Office employed 6 bilingual public defenders and assigned them to areas where they could serve as translators in addition to defending their clients. The Government made efforts to recruit justices of the peace who were bilingual in Spanish and an indigenous language. However, in 561 tribunals around the country there were only 62 judges who spoke Mayan languages and 22 court interpreters. Only 9 percent of police officers were indigenous. Better efforts were made to assign these officers to towns where their language skills could be used, and approximately 75 percent of them worked in the geographic area of their particular linguistic competency.

Two groups worked to represent indigenous issues. In August, a national Congress of Mayan People decided to create the National Assembly of Representatives of the Mayan People, which started selecting representatives from 16 departments and entered into dialogue with the National Council of Mayan Peoples to unify positions on indigenous demands of the new Government.

## Section 6 Worker Rights

#### a. The Right of Association

The Constitution and the Labor Code provide for freedom of association and the right to form and join trade unions; however, in practice the Government did not enforce effectively labor laws to protect workers who exercised their rights. All workers have the right to form or join unions, including public sector employees, with the exception of members of the security forces. Approximately 3 percent of the work force was unionized. The Government did not control unions nor did it interfere with union activities. Reforms to the national Labor Code, enacted in 2001, which the ILO direct contact mission considered "a significant step forward in the application of Conventions 87 (freedom of association) and 98 (right to organize and bargain collectively)," defined the mission of the Labor Ministry as guaranteeing "the free exercise of union rights." The reforms also permitted industrial or sectoral unions. Legal recognition of a new industrial union requires that the membership constitute one-half plus one of the workers in an industry. Labor activists considered this requirement a nearly insurmountable barrier to the formation of new industrial unions.

The law prohibits retribution for forming unions and for participating in trade union activities; in particular, the Labor Code prohibits employers from firing workers for union organizing and protects them from being fired for 60 days following notification to the Labor Ministry that a union is being formed. Thereafter, they can be fired for cause, unless they are members of the union's executive committee. However, enforcement of these provisions was weak. Many employers routinely sought to circumvent Labor Code provisions to resist unionization. An ineffective legal system and inadequate penalties for violations hindered enforcement of the right to form unions and participate in trade union activities in the past and perpetuated the violence that workers faced if they attempted to exercise their rights.

The law accords initial jurisdiction over labor law violations to the Labor Ministry and sets forth procedures for processing complaints, making initial determinations, and fining violators. The Ministry of Labor may levy substantial fines for violations of labor rights. During the year, the Ministry imposed a total of 4,009 fines, amounting to \$1.6 million (12.3 million quetzals); however, the number of fines actually paid was 535, amounting to \$194 thousand (1.5 million quetzals). Individual fines were generally low because companies may challenge Ministry fines above \$641 (4,968 quetzals) in the labor courts. The labor inspection system remains inadequate and corrupt, despite continuing efforts at improvement. Low pay, the lack of a strong ethic of public service, and ineffective management prevented the Ministry from providing effective service.

Retaliation, including firing, intimidation, "blacklisting" and sometimes violence, by employers and others against workers who tried to exercise internationally recognized labor rights was common and usually went unsanctioned. For example, Labor Ministry officials believed that allegations of blacklisting of members of the union formerly representing construction workers at the San Jose coal-fired power plant, who were illegally fired by DYMEI Incorporated, were credible. The ILO's Committee on Freedom of Association continued to monitor approximately a dozen allegations of serious violence between 1995 and 2000 against individuals for unionizing activities that lacked credible investigations, prosecutions, or trials. A Special Prosecutor for Crimes Against Unionists and Journalists, who reviewed such allegations, accepted a number of cases during the year, and 47 remained under investigation at year's end. Only two suspects have been brought before a judge, and only one was detained; judges or the Prosecutor's Office found the remaining cases to be without merit. Unlike last year, there were no reported killings of union leaders.

The most common violation of freedom of association was the dismissal of workers for unionizing activity. Some workers who suffered illegal dismissal took their case to the labor courts and won injunctions of reinstatement. Appeals and re-appeals by the employers, along with legal ploys such as re-incorporation as a different entity, often prolonged proceedings for years. The labor courts generally did not dismiss frivolous appeals, nor were their decisions enforced. According to Labor Ministry officials, the labor courts vindicated the majority of workers' claims against employers. However, employers complied with the court decisions in only a small number of cases, creating a climate of impunity. Often employers were not disciplined for ignoring legally binding court orders.

Employees generally were reluctant to exercise their right of association for fear of reprisal by employers. Workers had little confidence that the responsible executive and judicial institutions would effectively protect or defend their rights if violated. In addition, the weakness of labor inspectors, the failures of the judicial system, poverty, the legacy of violent repression of labor activists during the internal conflict, the climate of impunity, and the deep-seated hostility of the business establishment toward independent and self-governing labor associations all constrained the exercise of worker rights.

In June, authorities appealed a court injunction protecting Rosa Maria Gonzalez Gonzalez, who they suspect to be involved in the 2001 killing of Baudilio Cermeno Ramirez, the Organization Secretary of the Light and Energy Union.

Investigation of the 2000 killing of Oswaldo Monzon Lima, the secretary general of a fuel drivers' union, continued; the Special Prosecutor re-interviewed key witnesses but had not asked for an arrest warrant by year's end.

Labor leaders reported death threats and other acts of intimidation. On April 25, Rolando Chacon Escobar, councilman of Nueva Concepcion, was arrested for the November 2002 killing of Carlos Francisco Guzman Lanuza, the Secretary General of the Municipal Employees Union of Nueva Concepcion and leader of a union of South Coast workers, and his brother near Nueva Concepcion, Escuintla. At year's end, Chacon Escobar was in prison pending trial on corruption charges, and the investigation into the killings continued. Death threats that municipal union members in Chichicastenango reportedly received in 2002 ended after the mayor of Chichicastenango was arrested on corruption charges. The General Union of Guatemalan Workers (CGTG) reported a pattern of death threats received by union leaders pressing for payment of minimum wages on agricultural plantations. They also reported receiving death threats for advocating the innocence of jailed union leader Rigoberto Duenas. On January 17, CGTG union member, Marco Alvaro Tzoc, was shot and injured for stealing produce by the owner of the "el Arco" plantation, where he worked. The owner, Julio Cesar Salazar Pivaral, was arrested, charged with attempted murder, and released on bail.

An active "solidarismo" (solidarity) movement claims to have approximately 170,000 members in approximately 400 companies. Unions may operate legally in workplaces that have solidarity associations, and workers have the right to choose between them or to belong to both. The Government viewed these associations as civic organizations that need not interfere with the functioning of trade unions. The Labor Code stipulates that trade unions have an exclusive right to negotiate work conditions on behalf of workers; however, unions charged that management promoted solidarity associations to avoid the formation of trade unions or to compete with existing labor unions. Representatives of most organized labor groups criticized these associations for not permitting strikes, having inadequate grievance procedures, and for displacing genuine, independent trade unions with an employer-dominated structure. There were credible reports that some associations did not adhere to democratic principles.

During the year, the Labor Ministry granted legal status to 37 unions. There were 1,579 registered unions (509 in the public sector and 1,070 in the private sector), with approximately 120,000 members, or approximately 2.3 percent of the workforce. The registered unions were generally independent of government and political party domination.

On July 9, the two unions at the Choi Shin/Cimatextiles export assembly plants, which had suffered anti-union violence in 2001, reached a collective bargaining agreement with management, after the Ministry of Economy threatened to withdraw tax privileges if outstanding labor complaints were not resolved. The Government initiated similar proceedings against other factories with pending labor violations in September. The Ministry of Economy put export tax exemption privileges of 54 export-only companies under review in light of labor complaints pending with the Ministry of Labor.

The Labor Code provides for the right of employers to fire union workers for cause, permits workers to appeal their dismissal to the labor courts, and requires the reinstatement within 24 hours of any unionized worker fired without cause. The Labor Code also prohibits employers from firing any member of the executive committee of a union and also protects them for 12 months after their terms end. An employer may fire a member of the union's executive committee for cause only after a trial in a labor court and issuance of a court resolution. Even in clear-cut cases of illegal firings, labor laws were not enforced adequately. On October 27, a Korean-owned textile maquila (plant that assembles imported components for re-export) reinstated three workers fired on October 16 for attempting to form a union.

Despite efforts to restructure and modernize the labor court system, the system remained ineffective. There are 20 labor courts: 7 in the capital and 13 elsewhere around the country. An additional nine courts address labor issues, primarily appeals, as part of their jurisdiction. The weakness of the judicial system as a whole, the severe shortage of competent judges and staff, a heavy backlog of undecided cases, and failure to enforce effectively court rulings all contributed to the labor courts' lack of credibility and effectiveness. The small number of competent and motivated labor inspectors and the lack of training and resources devoted to detecting and investigating Labor Code violations compounded the weakness of the labor courts.

The Ministry of Labor continued efforts to improve the labor inspection system by: Increasing its rate of inspections, training and evaluating inspectors, dismissing some incompetent or corrupt inspectors, computerizing inspection reports, cooperating with an ILO study on inspection norms, and creating national and departmental consultative councils to discuss Labor Inspectorate operations.

The Ministry of Labor continued its educational campaign on worker rights, which included a campaign of radio spots and the provision of some educational materials in indigenous languages. The Ministry of Labor has seven regional offices to improve enforcement of the Labor Code outside the capital; regional staff includes labor inspectors and specialists in women and workplace issues, management-worker relations/conflict resolution, and child labor issues.

MINUGUA and the Human Rights Ombudsman's office of the Defender of Worker Rights took complaints related to violation of internationally recognized worker rights. The Human Rights Ombudsman's Office may investigate union complaints and issue a statement; however, the office has no enforcement powers beyond attempting to resolve the situation through publicity and persuasion.

Unions may and do form federations and confederations and affiliate with international organizations.

#### b. The Right to Organize and Bargain Collectively

Workers have the right to organize and bargain collectively; however, the small number of unionized workers limited the practice of collective bargaining. The prevailing business culture ignored labor contracts because, in practice, they were largely unenforceable due to the weak, cumbersome, and sometimes corrupt legal system. The Labor Code requires that one-half plus one of the union members must approve a collective bargaining agreement.

Other factors limiting the practice of collective bargaining included the requirement that 25 percent of the workers in a factory or business must be union members for collective bargaining to take place, lack of experience, and management's aversion to sharing power with workers. Management and labor honored collective contracts at some firms. In others, management, and sometimes labor, chose to ignore selected provisions of binding collective bargaining agreements. According to the Ministry of Labor, 21 collective bargaining agreements were registered during the year. Most workers, including those organized in trade unions, did not have collective contracts documenting their wages and working conditions, nor did they have individual contracts as required by law. According to the Labor Ministry, only 3.3 percent of the workforce had a contract legally registered with the ministry.

In January, a 2002 government decree prohibiting the executive branch from allowing any salary or other monetary benefits to increase under any collective bargaining agreement was withdrawn after it was challenged by labor groups and ruled unconstitutional by the Constitutional Court.

During labor conflicts, unions frequently seek a labor court injunction, which prohibits firing without approval of a judge until the conflict is resolved (277 such injunctions were filed in 2000, according to the most recent official data). Despite the greatly increased penalties for defying court injunctions that were adopted in 2001, the Ministry of Labor's enforcement remained problematic. The Labor Ministry, and its corps of labor inspectors in particular, continued to suffer from a lack of respect from employers, inadequate resources, and corruption (see Section 6.a.).

During the year, there were 12,589 routine labor inspections and 4,602 inspections based on a specific complaint.

Workers have the right to strike; however, the very low level of unionization and procedural hurdles made legal strikes rare. The Labor Code requires approval of one-half plus one of a firm's workers to call a legal strike. The Labor Code requires that a labor court consider whether workers are conducting themselves peacefully and have exhausted available mediation before ruling on the legality of a strike. The Labor Code empowers the President and his cabinet to suspend any strike deemed "gravely prejudicial to the country's essential activities and public services." Employers may suspend or fire workers for absence without leave if authorities have not recognized their strike as legal. The strike regulation law calls for binding arbitration if no agreement is reached after 30 days of negotiation.

There were no legal strikes during the year, although teachers and labor groups in the banana, health, and other sectors held illegal or unofficial work stoppages.

Labor laws and regulations apply throughout the country, including the few export processing zones (EPZs). Maquilas operate under an EPZ-like regime, although they are not located in distinctly established areas. There are only two collective bargaining agreements (covering 1,300 workers) between employers and any of the more than 125,000 workers in the export zones and maquila sector. Unions' lack of success organizing workers in these zones is affected by employer intimidation and pressure.

### c. Prohibition of Forced or Bonded Labor

The Constitution prohibits forced or bonded labor, including by children; however, some women and minors were trafficked for the purpose of sexual exploitation (see Section 6.f.). There were reports that employers sometimes forced workers to work overtime, often without premium pay (see Section 6.e.). Forced or bonded labor by children generally did not occur; however, the ILO reported that children worked as domestics in private homes in "conditions of modern slavery," and, in November, there was a report of forced labor by two children (see Section 6.d.).

### d. Status of Child Labor Practices and Minimum Age for Employment

The Constitution bars employment of minors under the age of 14 without written permission from the Ministry of Labor. A reform to the Labor Code submitted by the Executive to Congress in May to rescind the labor permit program and make all employment of minors under 14 illegal remained pending at year's end. However, the informal and agricultural sectors regularly employed younger children, usually in small family enterprises. Economic necessity forced most families to have their children work to supplement family income, particularly in rural and indigenous communities. A March joint report of the ILO, UNICEF and the World Bank estimated that 23 percent of minors under age 18 worked, up from 20 percent in 2000. The report estimated that 507,000 children age 7-14 years (20 percent of this age group) were engaged in work. Most minors worked at household chores, in subsistence agriculture, in family-run enterprises, and elsewhere in the informal economy.

The law prohibits minors from work in establishments where alcoholic beverages are served, from work in unhealthy or dangerous conditions, and from night work and extra hours (the legal workday for persons younger than 14 is 6 hours; for persons 14 to 17 years of age it is 7 hours). The ILO/UNICEF/World Bank report found that, despite these protections, children worked on average 47 hours per week.

The ILO's International Program on the Elimination of Child Labor launched projects to combat child labor in the fireworks industry, in the production of gravel, in the growing of coffee and broccoli crops, in domestic service, and in the commercial sex industry. The Labor Ministry estimated that between 3,000 and 5,000 children were employed in the illegal cottage-based fireworks industry, approximately 10 percent of them in factories, while others, under the age of 14, typically worked at home on piecework taken in by their families; accidents occurred regularly in the fireworks industry. According to press reports an average of 25 persons per year, the majority minors, suffered burns and amputations from accidents in the fabrication of fireworks. On December 10, three persons (including a 17-year-old) died and six others (including a 10-year-old) suffered second and third degree burns, when a legally registered fireworks factory exploded in San Raymundo, Sacatepequez Province.

Laws governing the employment of minors were not enforced effectively, due to the weakness of the labor inspection and labor court systems. The Labor Ministry granted 119 work permits for minors under age 14, compared with 124 such approvals in 2002. Many children under the age of 14 worked without legal permission and were vulnerable to exploitation. Their illegal status made them ineligible to receive social benefits, social insurance, vacations, or severance pay, and they often earned salaries below the minimum wage.

A 2002 ILO report indicated that 937,530 child workers (38,878 under age 18) worked as domestics in private homes in "conditions of modern slavery." In the capital, three-quarters of the children worked 13 to 16 hours a day, and their average monthly salary was approximately \$51 (395 quetzals). Many of the domestic workers suffered psychological mistreatment, including sexual abuse.

On November 21, the press reported the February 9 rescue of two children from a neighborhood in Guatemala City where they were chained, presumably to prevent them from escaping conditions of forced labor.

The Child Worker Protection Unit within the Ministry of Labor enforces restrictions on child labor and educates minors, their parents, and employers on the rights of minors in the labor market. The National Commission for the Elimination of Child Labor created in 2002 developed an operational plan to implement the 2000 National Plan to Eradicate Child Labor. In July, the Minister of Education issued regulations incorporating basic labor rights training into the secondary school curriculum.

### e. Acceptable Conditions of Work

Although the law sets minimum wages, noncompliance with minimum wage provisions in the rural and informal sectors was widespread. A 2001 government survey, the most recent available, noted that only 60 percent of the working population received the minimum wage or more. Advocacy groups, focused on rural sector issues,

estimated that more than half of workers engaged in day-long employment in the rural sector do not receive the wages, benefits, and social security allocations required by law. Minimum wage and working hour protection laws do not extend to domestic workers; however, in May, the President submitted a bill to Congress that would do so. It remained pending at year's end.

The Ministry of Labor oversees a tripartite committee that makes recommendations for increases in the minimum wage. In the event that agreement is not reached in the tripartite commission, the Government may decree such increases based on recommendations of the Labor Minister. The daily minimum wage was \$4.25 (33 quetzals) in agriculture and \$4.56 (35 quetzals) in commerce. The law requires an incentive bonus be added to this minimum wage for all hours worked, effectively raising the daily minimum wage to \$5.58 (43 quetzals) in agriculture and \$5.87 (45 quetzals) in commerce. In November, the President authorized a new minimum wage (effective January 1, 2004) that provided increases of 21 percent for agricultural workers and 16 percent for non-agricultural workers. For day shift workers, the standard 6-day workweek is 44 hours; for night shift workers, it is 36 hours; for swing shift workers, it is 42 hours. Time-and-a-half pay is required for overtime work.

The minimum wage was not sufficient to provide a decent standard of living for a worker and family. In its Human Development Report issued in September, the UNDP estimated that 57 percent of the population live below the poverty line and 21.5 percent in extreme poverty. The Ministry of Labor conducts inspections to monitor compliance with minimum wage provisions; however, the Ministry of Labor lacked the resources to enforce the minimum wage law adequately.

An estimated 75 percent of workers were in the informal sector and were therefore completely without labor protections. Only 24.6 percent of workers were covered by the National Social Security System in 2001, according to the Labor Ministry.

The legal workday is 8 hours and the workweek is 44 hours; a tradition of longer hours remained in place in certain sectors. These limits do not apply to domestic workers; a reform pending in Congress would apply these conditions to domestic workers. The Labor Code requires a weekly paid rest period of at least 24 hours. Trade union leaders and human rights groups charged that employers sometimes forced workers to work overtime, often without premium pay. Labor inspectors reported uncovering numerous instances of such abuses, but the lack of stiff fines or strong regulatory sanctions, as well as inefficiencies in the labor court system and enforcement of court orders, have inhibited adequate enforcement of the law.

Occupational health and safety standards were inadequate and enforcement remained weak. During the year, the Ministry of Labor participated in a number of regional international initiatives intended to sensitize employers and workers to health and safety risks in the workplace. The Labor Ministry provided training courses for labor inspectors in health and safety standards and gave such training priority. In December, the Ministry of Labor hosted a seminar with the Chamber of Construction Industries and unions to promote formation of health and safety workplace committees, an initiative included in the 2002 National Plan for Occupational Health and Safety.

When serious or fatal industrial accidents occurred, the authorities often failed to investigate fully or assign responsibility for negligence. Employers rarely were sanctioned for failing to provide a safe workplace. Legislation requiring companies with more than 50 employees to provide on-site medical facilities for their workers was not enforced; however, most large employers did provide such facilities for their employees. The fireworks industry is particularly hazardous (see Section 6.b.). Workers have the legal right to remove themselves from dangerous work situations without reprisal. However, few workers were willing to jeopardize their jobs by complaining about unsafe working conditions.

A 2002 Human Rights Watch (HRW) report alleged that women workers, particularly in the domestic and maquila for-export manufacturing sector, suffered discrimination and sexual harassment. In May, the President proposed legislation to criminalize sexual harassment at work; the proposal remained pending at year's end. Labor law exempts domestic workers from the right to an 8-hour workday and the 44-hour workweek, provides domestics only limited rights to national holidays and weekly rest, and denies domestics the right to employee health care under the national social security system. An executive decree exempts domestic workers from the Labor Code provision that all workers have the right to the minimum wage.

The HRW 2002 report alleged that maquilas, which employed approximately 100,000 women, often forced women to reveal whether they are pregnant as a condition of employment.

#### f. Trafficking in Persons

The law specifically prohibits trafficking and smuggling of persons; however, trafficking in women and children was a problem.

Trafficking in persons for the purpose of practicing prostitution is punishable by 1-3 years' imprisonment and a fine between \$335 and \$2,000 (2,500 and 15,000 quetzals); the fine for procuring minors is between \$470 (3,500 and 13,000 quetzals); at year's end, legislation was pending in Congress to increase these sanctions. The Government investigated trafficking cases and reported that it had initiated 26 prosecutions for trafficking between January 2002 and March, and at least two traffickers were imprisoned as a result of prosecution during the year. Most victims failed to press charges due to a cumbersome judicial system and fear of reprisal or deportation. Some prison sentences for traffickers are commutable to fines.

The Defense of Children's Rights unit in the Human Rights Ombudsman's Office and the newly created Minor Victims Section of the Prosecutor's Office investigate cases of trafficking.

NGOs and the press credibly alleged that some Immigration Service officers accepted bribes in return for allowing traffickers to bring children into the country for purposes of sexual exploitation. The Directorate of Migration reported that there were 80 dismissals for corruption and 46 pending disciplinary procedures, compared with 126 dismissals and 86 disciplinary procedures in 2002.

The country was a source and transit point for women and children trafficked for the purpose of sexual exploitation. There was also internal trafficking, and, in some cases, the country was a destination for trafficked persons who came mainly from other Central American countries and Ecuador. Victims trafficked to Guatemala were usually young women or minors who were trafficked for sexual exploitation and were placed in poor surroundings and paid low salaries. The most common "contracting places" are along the borders.

The country was a significant transit and source country for alien smuggling, from neighboring Central American countries and from Ecuador, China, Taiwan, and South Asia. Some aliens were trafficked to the United States.

Those trafficked from the country for sexual exploitation were usually minors, both boys and girls, from poor families. The traffickers often approached these individuals and offered them lucrative jobs, which would allow them to make regular remittances back to their families. The approaches included promises of economic rewards, jobs in cafeterias or beauty parlors, or jobs in other countries. The means of promotion included flyers, newspaper advertisements, and verbal or personal recommendations. Traffickers also used force, coercion, fraud, and deception.

Sexual exploitation of children, including child prostitution and the trafficking of children for purposes of prostitution, was a growing problem (see Section 5).

The Government assisted some victims of trafficking by providing shelters for children under protection by court order. Victims were not treated as criminals, although some were deported.

The Government conducted anti-trafficking and anti-smuggling public awareness campaigns. NGOs that focus on women and children's rights often helped victims of trafficking and worked to educate the population about the dangers of trafficking. In October, UNICEF started a public relations campaign to warn Central Americans about the risks of exploitation by traffickers, particularly to alert parents to the dangers faced by unaccompanied minors attempting to migrate illegally to the United States. The campaign consisted of radio spots and videos shown on border-crossing buses.